

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DEBRA ANN CLIFTON, widow of ROBERT CLIFTON and DEPARTMENT  
OF THE NAVY, NAVAL SEA SYSTEMS COMMAND, Bremerton, Wash.

*Docket No. 97-252; Submitted on the Record;  
Issued December 4, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
MICHAEL E. GROOM

The issue is whether the employee's suicide on January 6, 1995 was causally related to factors of his federal employment.

The Federal Employees' Compensation Act at section 8102(a), provides in relevant part:

"The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty, unless the injury or death is--

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(2) caused by the employee's intention to bring about the injury or death of himself or another...."<sup>1</sup>

The Board has explained that while it would appear that an employee's death by suicide would not be compensable under the Act, in this regard, the Act is similar to workers' compensation statutes in other jurisdictions, which have analogous preclusions pertaining to injury or death from suicide or intentional self-injury.<sup>2</sup> The prevailing rule in a majority of jurisdictions, including the Act, is the chain-of-causation test, which has been adopted by the Office of Workers' Compensation Programs in determining whether an employee's suicide is compensable under the Act.<sup>3</sup> The chain-of-causation test as stated by Larson in his treatise, *The*

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<sup>1</sup> 5 U.S.C. § 8102(a)(2).

<sup>2</sup> See *Carolyn King Palermo (Dwayne Palermo)*, 45 ECAB 308(1994).

<sup>3</sup> *Id*; see also Federal (FECA) Procedure Manual, *Performance of Duty*, Chapter 2.804.15 (March 1994).

*Law of Workmen's Compensation*,<sup>4</sup> provides that suicide under the majority rule is compensable if the injury produces mental derangement and the mental derangement produces suicide.”

In applying the chain-of-causation test, Larson notes that the suicide must have its origin in a work-connected injury. He states:

“The correct statement is that the suicide must be the result of some injury arising out of and in the course of employment. In other words, at the very outset there must be found an injury which itself arose out of and in the course of employment, and then the suicide must be traced directly to it. If there is no such employment connected injury setting in motion the causal sequence leading to the suicide, *or when there are far stronger nonemployment influences accounting for the suicide*, the suicide is a complete defense.”<sup>5</sup>

The Board has stated that the evidence in each case must be examined in order to determine whether, but for the employment injury, would the employee have committed suicide.<sup>6</sup> The Board has explained that there must be a direct causal relationship between the employment injury and the suicide, unbroken by other intervening influences. The Board has noted its adoption of Larson’s rationale that “compensability for suicide is dependent on some direct causal connection between the employment, the mental aberration and the suicide and this connection must not be overpowered and nullified by influences originating entirely outside the employment. Consequently, compensation has been denied where the mental condition and resulting suicide were primarily caused by nonwork-connected injuries, or problems.”<sup>7</sup>

The Board has explained in a factually similar case, *Carolyn King Palermo (Dwayne Palermo)*<sup>8</sup> that for compensability to arise for the employee’s suicide under the Act, a direct causal chain must be established between an employment injury, which was the cause for the employee’s depression, which was of such a degree as to override his normal and rational judgment and which resulted in his suicide. The proximate cause of the employee’s death must be established in an employment injury, which in a natural and continuous sequence unbroken by any new or independent causes produced his death and without which the death would not have occurred. For compensable factors to merely contribute to the mental disorder and the suicide is not sufficient; the compensable factors must be a direct cause without which the suicide would not have occurred.<sup>9</sup> In *Palermo*, the Board considered the appellant’s argument that the Office had erroneously found that the compensable factors of employment must be the sole motivation for the suicide. The Board explained that the medical evidence of record must

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<sup>4</sup> A. Larson, *The Law of Workers’ Compensation* § 36.00, *Suicide or Intentional Self-Injury*.

<sup>5</sup> *Supra* note 4 at § 36.40.

<sup>6</sup> *Supra* note 2.

<sup>7</sup> *See Palermo* note 2. Larson, *The Law of Workers’ Compensation* § 36.00.

<sup>8</sup> *Supra* note 2.

<sup>9</sup> *Id.*

establish that compensable factors of employment not only merely contributed to the mental disorder and the suicide, but that the compensable factors were the direct cause, without which the suicide would not have occurred.

Applying this test in the present case, the Board finds that the evidence does not establish that the employee's suicide was the direct result of his employment injuries.

In the present case, the Office has accepted that the employee, a shipfitter, sustained a number of employment injuries during the course of his federal employment. The Office accepted that the employee sustained a left knee strain on February 10, 1986; contact dermatitis of the face and dorsum of both hands on June 12, 1987; strain of the right knee and left ankle on May 14, 1988; contusion of the right elbow on November 7, 1989; a right knee strain and tear of the right medial meniscus on December 3, 1990; contact dermatitis of the hands, face and wrists on February 8, 1993; and a right knee strain and exacerbation of preexisting job-related degenerative joint disease of the right knee on February 26, 1994. The medical evidence of record also substantiates that the employee was diagnosed with depression in October 1994 and was hospitalized from January 2 to January 4, 1995 for depression. The employee committed suicide on January 6, 1995. The Office denied appellant's claim that the employee's suicide was causally related to his accepted employment injuries by decision dated July 30, 1996.

The Board finds that appellant has not met her burden of proof as the medical evidence does not provide a rationalized medical opinion that the employee's employment injuries were the primary cause of his depression which ultimately led to his suicide. As there is medical evidence of record that nonwork-related marital problems were also a cause of appellant's depression and suicide and as the medical evidence does not distinguish the cause of the employee's depression, appellant did not meet her burden of proof in this case.

The medical evidence of record substantiates that the employee was seen on October 6, 1994 by Dr. Steven M. Savlov, a clinical psychologist. Dr. Savlov's report indicated that appellant had requested marriage counseling as, after 16 years of marriage, he was experiencing increasing jealousy of his wife. He stated that the employee and his wife were very vague regarding the problems they were experiencing as they were concerned over the confidentiality of his records. Dr. Savlov stated that during the employee's second assessment session, the employee stated that he wanted to focus on issues regarding being out of work and on workers' compensation and the affect on his self-esteem. He diagnosed "pain disorder associated with both psychological factors and a general medical condition, rule out dysthymia. Patient states that depression has not been a part of the picture until he was injured; therefore, one is entertaining the diagnosis of adjustment disorder with depressed mood. Partner relationship problems." While Dr. Savlov noted appellant's concerns regarding marital issues as well as issues regarding his employment injury, Dr. Savlov did not offer any opinion in this report as to whether appellant's accepted physical employment injuries or his marital problems caused the diagnosed condition.

The employee was seen by his treating orthopedic surgeon, Dr. Alan J. Searle, on October 13, 1994 for symptoms associated with his knee injury. He noted that appellant appeared depressed and had requested a referral to psychiatry. Dr. Searle also noted that he had suggested that appellant consider marital counseling, he did not explain the factual basis for this

recommendation. Again Dr. Searle's report noted marital issues as well as physical injury issues which concerned the employee. Dr. Searle did not, however, offer any medical opinion regarding the cause of the employee's depression.

On January 2, 1995 the employee was hospitalized for depression and suicidal ideation. In an admitting note dated January 2, 1995, Dr. David O. Miller, stated that the employee had voiced concerns regarding his inability to function emotionally over the past several weeks and that it was difficult for him to feel free to provide specific information about the events that had, in his mind, caused these problems. Dr. Miller noted the employee's statements regarding his history of employment injury and that the employee had expressed concern about some other events that he had "discovered" concerning his wife, children and "others". Dr. Miller diagnosed depression but did not offer any opinion regarding the cause of this condition. Dr. David D. Hollenbeck, noted that the employee's history was extremely difficult to obtain and was, therefore, felt to be incomplete. Dr. Hollenbeck noted that the employee had sustained an on-the-job injury in February 1994 to the right knee, had not worked since, had been attending vocational counseling and was hoping to be retrained soon. He also noted that the employee admitted to having marital problems and had made reference to the possibility of a separation from his wife. A further history obtained from the employee's wife further described their marital difficulties. Diagnoses were offered of major depression, single episode, moderate; and psychological and environmental problems: marital problems, an on-the-job injury, unemployment and financial difficulties. While Dr. Hollenbeck's report noted both the employee's employment injury and marital issues as contributing factors to the diagnosed depression, Dr. Hollenbeck did not provide a rationalized opinion explaining the cause of the employee's depression.

Appellant bears the burden of proof to establish a direct causal relationship between the employment injury and the suicide, unbroken by other intervening influences. In this case, appellant has not submitted the necessary rationalized medical evidence to establish that direct causal relationship.

The decision of the Office of Workers' Compensation Programs dated July 30, 1996 is hereby affirmed.

Dated, Washington, D.C.  
December 4, 1998

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Michael E. Groom  
Alternate Member